Majlis Perbandaran Klang v Zakiyah bte Samad

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01–15–2002(B)
STEVE SHIM CJ (SABAH & SARAWAK), ABDUL MALEK AHMAD AND ABDUL HAMID MOHAMAD FCJJ
4 MARCH 2004

Local Government — Rates — Appeal — Rate of assessment — Respondent appealed that annual value and rate of assessment should be reduced — High Court maintained annual value but reduced rate of assessment — Whether rate of assessment appealable — Local Government Act 1976 ss 142, 144, 145

The respondent is the owner of unit B–7–25, 7th Floor, Flat Cempaka, Persiaran Bukit Raja, Bandar Baru Klang. She received her notice of assessment dated 1 December 2000 from the appellant which stated that the annual value of the holding is RM2,400, that the rate of assessment is 9% and that the assessment is RM216 pa. Being dissatisfied with the notice of assessment, the owners of Rumah Pangsa Cempaka and Mawar through their association, Persatuan Penduduk Rumah Pangsa Cempaka and Mawar filed an objection against the rate of assessment of 9% pursuant to s 142 of the Local Government Act 1976 ('the Act'). The appellant reduced the annual value, maintained the rate of assessment and reduced the assessment payable. The appellant appealed pursuant to s 145, praying that the rate of assessment and the annual value imposed should be reduced and the court should fix the annual value for 2001. The High Court maintained the annual value but allowed the appeal as to the rate of assessment and made reference to *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418. Counsel for the appellant argued that a reading of s 142 of the Act showed that the question of the rate of assessment was not an appealable matter. He stated that the High Court judge had confused the capitalisaton rate with the rate of assessment.

Held, allowing the appeal:

The rate of assessment was not appealable under s 145 of the Act, which covered appeals by persons aggrieved by the decision of the local authority as regards their objections under ss 142 or 144 of the Act, as no objection could be made against the rate of assessment under s 142(1) of the Act in the first place. The facts in *Shell Malaysia Trading Sdn Bhd* were clearly distinguishable (see para 13) .

[**Bahasa Malaysia summary**

Responden merupakan pemunya unit B-7-25, Tingkat 7, Flat Cempaka, Persiaran Bukit Raja, Bandar Baru Klang. Beliau menerima notis taksiran beliau bertarikh 1 Disember 2000 daripada perayu yang mengatakan bahawa nilai tahunan pegangan itu adalah RM2,400, bahawa kadar taksiran adalah 9% dan bahawa taksiran itu adalah RM216 setahun. Pemunya-pemunya Rumah Pangsa Cempaka dan Mawar tidak berpuas hati dan telah melalui persatuan mereka, Persatuan Penduduk Rumah Pangsa Cempaka

dan Mawar memfailkan satu bantahan awal terhadap kadar taksiran 9% mengikut s 142 Akta Kerajaan Tempatan 1976 ('Akta tersebut'). Perayu telah mengurangkan nilai tahunan, mengekalkan kadar taksiran dan mengurangkan taksiran yang perlu dijelaskan. Perayu telah merayu mengikut s 145 memohon bahawa kadar taksiran dan nilai tahunan dikurangkan dan bahawa mahkamah patut menentukan nilai tahunan 2001. Mahkamah Tinggi telah mengekalkan nilai tahunan tetapi telah membenarkan rayuan mengenai kadar taksiran dan telah merujuk kepada *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418. Peguam perayu menghujah bahawa daripada penelitian s 142 Akta tersebut, persoalan kadar taksiran bukan merupakan perkara yang dapat dirayu. Beliau mengatakan bahawa Mahkamah Tinggi telah mengelirukan kadar pemodalan dengan kadar taksiran.

Diputuskan, membenarkan rayuan itu:

Kadar taksiran tidak dapat dirayukan di bawah s 145 Akta tersebut yang meliputi rayuan daripada orang yang terkilan dengan keputusan pihak berkuasa tempatan mengenai bantahan mereka di bawah ss 142 atau 144 Akta tersebut kerana tiada bantahan dapat dibuat terhadap kadar taksiran di bawah s 142(1) Akta tersebut. Fakta-fakta di dalam *Shell Malaysia Trading Sdn Bhd* dapat dibezakan (lihat perenggan 13).]

Notes

For cases on appeals of rates, see 10 Mallal's Digest (4th Ed 2002 Reissue) paras 138-143.

Cases referred to

Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang [1988] 3 MLJ 418 (dist)

Legislation referred to

Local Government Act 1976 ss 129, 142, (1)(a), (e), 144, 145

Appeal from: Originating Motion No MT4–21–81–2001 (High Court, Shah Alam)

S Selvarajah (R Thanasegar with him) (Fernandez & Selvarajah) for the appellant.

Zulkepli bin Omar (Mohd Yaacob bin Bakanali with him) (Lainah Yaacob & Zulkepli) for the respondent.

Abdul Malek Ahmad FCJ (delivering judgment of the court):

[1] The respondent is the owner of unit B–7–25, 7th Floor, Flat Cempaka, Persiaran Bukit Raja, Bandar Baru Klang. She received her notice of assessment dated 1 December 2000 from the appellant which

stated that the annual value of the holding is RM2,400, that the rate of assessment is 9% and that the assessment is RM216 pa.

[2] Being dissatisfied with the notice of assessment, the owners of Rumah Pangsa Cempaka and Mawar through their association, Persatuan Penduduk Rumah Pangsa Cempaka and Mawar filed an objection against the rate of assessment of 9% pursuant to s 142 of the Local Government Act 1976 ('the Act').

[3] The objection was heard on 17 January 2001 where the respondent was represented by her husband who, also on behalf of seven other owners who were present, raised objections only with regard to the rate of assessment.

[4] As a result, the appellant decided on 22 May 2001 to reduce the annual value from RM2,400 to RM1,920, maintain the rate of assessment at 9% and reduce the assessment payable from RM216 to RM172.80.

[5] The respondent appealed to the High Court pursuant to s 145 of the Act by way of originating motion where she prayed for the following reliefs:

(a) that the rate of assessment of 9% pa and the annual value imposed on the holding is excessive and ought to be reduced;

(b) that the court fix the annual value for the year 2001 until such period determined by this court and the rate of assessment be determined as it deems fit and proper.

[6] The learned High Court judge decided to maintain the annual value reduced from RM2,400 to RM1,920 as it was reasonable and not excessive butallowed the appeal in relation to the rate of assessment by reducing it from 9% to 6% on the grounds that it was very high compared to the rates imposed by other local authorities for similar properties as in Shah Alam it was 4.5% for houses and 5% for flats and in Kuala Lumpur it was 6%.

[7] In his judgment, he relied on s 142(1)(a) and (e) of the the Act. For ease of reference, the whole subsection is reproduced below:

> Any person aggrieved on any of the following grounds –
>
> (a) that any holding for which he is rateable is valued beyond its rateable value;
>
> (b) that any holding valued is not rateable;
>
> (c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;
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> (d) that any holding is valued below its rateable value; or
>
> (e) that any holding or holdings which have been jointly or separately valued ought to be valued otherwise,
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> may make objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the Valuation List.

[8] He also made reference to *Shell Malaysia Trading Sdn Bhd v Majlis Perbandaran Klang* [1988] 3 MLJ 418 where the court had allowed a reduction on the rate of assessment from 8.25% to 7% pa on two properties in the same area although there was a difference in their size, business profits and year of construction. A

[9] He said that although the rate of assessment had been approved by the state authority through the 2001 budget estimates, they were purely estimates and not final. A case in point was the Shah Alam city council which was subject to the same budget estimates but did not raise their rates. This shows that the budget estimates were not binding. The difference becomes more pronounced, he added, considering that the areas managed by the Shah Alam city council were more developed than those under the appellant. B C

[10] In these circumstances, although the rate of assessment has been fixed at 9% pa since 1993, the learned High Court judge questioned the reasonableness for the appellant to continue fixing the same rate for property described as low cost housing for those with low income and subjected to restricted sale by the Selangor state authority. D

[11] Learned counsel for the appellant argued that a plain reading of s 142 of the Act clearly shows that the question of the rate of assessment is not an appealable matter. The case relied on by the learned High Court judge was distinguishable, he added, as in the *Shell Malaysia Trading Sdn Bhd* matter, the appeal was on the annual value and in reducing it, the High Court considered the capitalisation rate to determine the annual value. The High Court accepted this capitalisation rate of 7% pa relied on by the appellant over that of 8.25% pa relied on by the local authority. Learned counsel submitted that the question of the rate of assessment was not at all an issue. It would appear, he further submitted, that the learned High Court judge in this instance had confused himself by equating the capitalisation rate with the rate of assessment. E F

[12] Learned counsel for the respondent referred to s 129 of the Act which states: G

> 129 Division of area and holding for rating purposes.
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> For the purpose of this Part, the local authority may divide its area into two or more parts and may in respect of such separate part or parts impose such rate or rates as may be considered just and proper and the local authority may further impose within such part or parts a differential rating in accordance with the actual usage of the holding or part thereof. H

[13] It is obvious that the learned High Court judge never made any reference to s 129 of the Act. Having considered the arguments, we were inclined to agree with the learned counsel for the appellant that the rate of assessment is not appealable under s 145 of the Act, which covers appeals by persons aggrieved by the decision of the local authority as regards their objections under ss 142 or 144 of the Act, as no objection could be made against the rate of assessment under s 142(1) of the Act in the first place. I

The facts in *Shell Malaysia Trading Sdn Bhd* were clearly distinguishable. We accordingly allowed the appeal but made no order as to costs. The deposit was refunded.

Appeal allowed.

Reported by Chew Phye Ken